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 RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
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10 Attorneys for Defendants
 11 ETHICON, INC. (on its own behalf and behalf of its
 12 Division, ETHICON WOMEN'S HEALTH &
 13 UROLOGY, and erroneously sued as GYNECARE,
 14 INC.); and JOHNSON & JOHNSON

15
 16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA
 18 SAN FRANCISCO DIVISION

19 DIANE McIRVIN, an individual; and
 20 ALICE GALE WILSON, an individual,

21 Plaintiffs,

22 v.

23 GYNECARE, INC., a California
 24 corporation; ETHICON, INC., a New
 25 Jersey corporation; JOHNSON &
 26 JOHNSON, a New Jersey corporation; and
 27 DOE MANUFACTURES ONE through
 28 ONE HUNDRED,

Defendants.

CV11 0697

Case No. _____

NOTICE OF REMOVAL AND REMOVAL
 OF ACTION UNDER 28 U.S.C. § 1441(B)
 (DIVERSITY) OF DEFENDANTS
 ETHICON, INC. (ON ITS OWN BEHALF
 AND BEHALF OF ITS DIVISION,
 ETHICON WOMEN'S HEALTH &
 UROLOGY, AND ERRONEOUSLY SUED
 AS GYNECARE, INC.); and JOHNSON &
 JOHNSON

TO THE CLERK OF THE COURT:

Defendants ETHICON, INC. (on its own behalf and behalf of its Division, ETHICON WOMEN'S HEALTH & UROLOGY, and erroneously sued as GYNECARE, INC.) ("Ethicon"); and JOHNSON & JOHNSON ("J&J") (collectively "Defendants") submit this Notice of Removal of *Diane McIrvin and Alice Gale Wilson v. Gynecare, Inc. et al.*, filed in the Superior Court of the State of California, County of San Francisco, Case No. CGC-10-506696, on the ground this Court

1 has original jurisdiction under 28 U.S.C. §§ 1332 and 1441. Diversity of citizenship exists
 2 between Plaintiffs and Defendants, and it is facially evident from the Complaint that the amount in
 3 controversy exceeds \$75,000.00, exclusive of interest and costs.

4 1. San Francisco County, California is located within the Northern District of
 5 California. For purposes of removal, venue is proper pursuant to 28 U.S.C. § 84(a) because the
 6 Northern District of California is the “district and division embracing the place where such action
 7 is pending.” 28 U.S.C. 1441(a).

8 2. On December 27, 2010, Plaintiffs filed their Complaint. (Ex. A to the Decl. of
 9 Michelle A. Childers in Support of Notice of Removal and Removal (“Childers Decl.”)) Service
 10 was made on J&J on January 17, 2011. (Childers Decl. at ¶ 3) On February 14, 2011,
 11 Defendants each filed their respective Answers in San Francisco Superior Court. (Ex. B to
 12 Childers Decl.) The Complaint and the Answers of Defendants are the only known pleadings
 13 filed to date in this matter. (Childers Decl. at ¶ 5)

14 3. Plaintiffs Diane McIrvin and Alice Gale Wilson (“Plaintiffs”) allege that on or
 15 about November 2010, Ms. McIrvin was, and that later on or about December 30, 2008, Ms.
 16 Wilson was, each implanted with unidentified synthetic surgical mesh devices (hereinafter “mesh
 17 devices”) that were designed, manufactured, marketed, and sold by Defendants. (Ex. A to ¶¶ 16-
 18 21) Although it is unclear from the Complaint, Plaintiffs apparently allege they were implanted
 19 with the mesh devices for repair of pelvic organ prolapse, cystocele, and stress urinary
 20 incontinence. (*Id.* at ¶¶ 16, 17, 21) Plaintiffs claim that, since implantation, they have suffered,
 21 *inter alia*, “erosion, shrinkage and extrusion of mesh” from one or more of the mesh devices,
 22 resulting in “urinary retention, severe persistent pain, including dyspareunia, and numerous
 23 surgical procedures to remove” the medical devices. (*Id.* at ¶ 21) Plaintiffs claim they have
 24 experienced “severe physical and emotional injuries, including but not limited to, multiple
 25 surgical procedures, painful scarring and worsening and continuing dyspareunia,” (*id.* at ¶ 30),
 26 and “severe and permanent personal injuries.” (*Id.* at 15:9)

27 4. It is facially evident from the Complaint that the amount in controversy exceeds
 28 \$75,000.00. *See Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373 (9th Cir. 1997).

1 Plaintiffs allege "numerous surgical procedures" and "multiple surgical procedures" have been
 2 necessary to remove the mesh devices. (Ex. A at ¶¶ 21, 30) Plaintiffs allege they have suffered
 3 permanent personal injuries and has worsening dyspareunia. (*Id.* at ¶ 30) Plaintiffs pray for past
 4 and future damages, including "pain and suffering for severe and permanent personal injuries . . . ,
 5 health care costs, [and] medical monitoring." (*Id.* at 15:8-10) Plaintiffs pray for lost wages and
 6 loss of earning capacity. (*Id.* at 15:11-12) Plaintiffs also pray for an award of punitive and/or
 7 exemplary damages, (*id.* at 15:14-17), and for attorneys' fees. (*Id.* at 15:20) Other cases brought
 8 by plaintiffs alleging severe pain, dyspareunia, and corrective surgeries have resulted in verdicts
 9 in excess of \$75,000.00, exclusive of interest and costs. (Childers Decl. at ¶ 6) Given the
 10 similarity between the injuries alleged in other cases and the injuries alleged by Plaintiffs here,
 11 and based on defense counsel's experience defending products liability actions, it is facially
 12 evident from the Complaint that each Plaintiff has placed in excess of \$75,000.00 in controversy,
 13 exclusive of interest and costs. (*Id.*)

14 5. With respect to diversity of citizenship, Defendants are informed and believe that
 15 Plaintiff Diane McIrvin is and was, at all relevant times, a citizen of the State of California and
 16 that Plaintiff Alice Gale Wilson is and was, at all relevant times, a citizen of the State of Indiana.
 17 (Ex. A at ¶ 1) Defendant J&J is a company incorporated under the laws of the State of New
 18 Jersey, with its principal place of business in New Brunswick, New Jersey. (Declaration of
 19 Lisbeth A. Warren in Support of Notice of Removal and Removal ("Warren Decl.") at ¶ 2)
 20 Defendant Ethicon is a company organized under the laws of the State of New Jersey with its
 21 principal place of business in Somerville, New Jersey. (*Id.* at ¶ 3) Gynecare, Inc., a Delaware
 22 company, was acquired by J&J on November 19, 1997. (*Id.* at ¶ 4) Gynecare, Inc. merged out of
 23 existence and into Ethicon on January 3, 2000. (*Id.*) Ethicon Women's Health & Urology, which
 24 previously operated as the Gynecare division of Ethicon, is an unincorporated division of Ethicon,
 25 with its administrative offices in Somerville, New Jersey. (*Id.* at ¶ 5) Ethicon Women's Health
 26 & Urology is the business unit responsible for the manufacturing and marketing of Gynecare-
 27 brand mesh products in the United States, the type of products seemingly alleged to be at issue.
 28 (*Id.*) Thus, each and every defendant to this action is a citizen of a state other than California and

1 Indiana. See 28 U.S.C. § 1332(c)(1). Accordingly, complete diversity exists.

2 6. Removal is timely under 28 U.S.C. § 1446(b) as this Removal is filed within 30
3 days of service on Defendants, who were first served on January 17, 2011. (Childers Decl. at ¶ 3)

4 7. Immediately following the filing of this Notice of Removal, written notice of the
5 filing of this Notice will be delivered to Plaintiffs, and will be filed with the Clerk of Court in the
6 Superior Court of the State of California, County of San Francisco.

7 8. By removing this action to this Court, Defendants do not waive any defenses,
8 objections or motions available to them under state or federal law. Defendants expressly reserve
9 the right to move for dismissal of Plaintiffs' claims pursuant to Rule 12 of the Federal Rules of
10 Civil Procedure.

11 WHEREFORE, Defendants respectfully remove this action from the Superior Court of the
12 State of California for the County of San Francisco to the United States District Court for the
13 Northern District of California, pursuant to 28 U.S.C. §§ 1332 and 1441.

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15 Dated: February 15, 2011

DRINKER BIDDLE & REATH LLP

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By:


Michelle A. Childers
Nathan D. Cardozo

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Attorneys for Defendants

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behalf of its Division, ETHICON WOMEN'S
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